

Around 1:00 p.m., Ms. (b)(6) attorney arrived and spoke with her for about 15 minutes, largely through gestures, due to language barriers. The attorney reportedly believes that Ms. (b)(6) was trying to tell him that her arm hurt because she had been grabbed during the fingerprinting process. Later that day, Ms. (b)(6) was handcuffed behind her back, taken from the facility, and escorted to a van. A male ICE officer allegedly put his hand inside Ms. (b)(6) pants, grabbed her buttock, then boosted her up to get her into the van. The ACLU claims that Ms. (b)(6) felt violated by that alleged "groping." Ms. (b)(6) was then transported to the border and removed to Mexico.

Ms. (b)(6) requests that CRCL conduct an investigation of the conduct of the ICE officers in this matter, review the ICE arrest and detention procedures and training to determine whether changes are warranted, and arrange to have Ms. (b)(6) readmitted to the U.S. pursuant to humanitarian parole.

The ACLU copied the Assistant Secretary off ICE; the Field Office Director of ICE, San Diego Field Office; the Assistant Attorney General, DOJ Civil Rights Division; and Inspector General Richard Skinner on the correspondence.

Thank You,

(b)(6)

Review and Compliance Division
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
(202) 351-(b)(6) v)
(202) 401-4708(F)

From: (b)(6)
Sent: Tuesday, July 27, 2010 2:39 PM
To: (b)(6),(b)(7)(C)
Cc: ICE Opstasking; JOINT INTAKE; (b)(6),(b)(7)(C)
Subject: CRCL Referred-Plus Complaint Documents for a Matter Involving ICE
Attachments: ORIGINAL COMPLAINT (b)(6) 0001.pdf; REFERRED-PLUS MEMO (b)(6) 0001.pdf; REF FORM (b)(6) 0001.pdf

Dear ICE Colleagues,

Please see the attached complaint documents for a matter involving ICE. CRCL is treating this matter as a Referred-Plus complaint. As such, CRCL will be working with ICE, collaboratively, to complete a joint inquiry into the allegations.

Please let us know if you have any questions.

Regards,

(b)(6)
Senior Policy Advisor (Compliance)
Office for Civil Rights and Civil Liberties (CRCL)
U.S. Department of Homeland Security
Washington, DC
202-357-(b)(6) **New Phone Number as of 6/28/10)**
(b)(6)@dhs.gov

WARNING: This message may contain attorney-client communications, attorney work product, and agency deliberative communications, all of which may be privileged and not subject to disclosure outside the agency or to the public. Please consult with the Department of Homeland Security, Office of General Counsel before disclosing any information contained in this email.

From: (b)(6)@dhs.gov]
Sent: Thursday, September 02, 2010 10:15 AM
To: (b)(6),(b)(7)(C)
Cc: (b)(6)
Subject: RE: Plan Onsite - (b)(6) CRCL Referred-Plus Complaint #10-09-ICE-0126)

(b)(6),(b)(7)(C)

First, welcome to DC (b)(6),(b)(7)(C) I'll look forward to hearing from you when time to plan this.

Have a great day.

(b)(6)

Senior Policy Advisor (Compliance)
Office for Civil Rights and Civil Liberties (CRCL)
U.S. Department of Homeland Security
Washington, DC
202-357-(b)(6) **New Phone Number as of 6/28/10)**
(b)(6)@dhs.gov



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From: (b)(6),(b)(7)(C)@dhs.gov]
Sent: Wednesday, September 01, 2010 8:08 PM
To: (b)(6) (b)(6),(b)(7)(C)
Subject: Re: Plan Onsite - (b)(6) CRCL Referred-Plus Complaint #10-09-ICE-0126)

Hi (b)(6)

Since we chatted last, I was transferred to DC. So, I will ask you to please contact my replacement, Ms. (b)(6),(b)(7)(C) the new OPR Special Agent in Charge, West. I'm sure she will be able to support your requests.

Thanks (b)(6),(b)(7)(C)

From: (b)(6)@dhs.gov>
To: (b)(6),(b)(7)(C)@dhs.gov>

Cc: (b)(6),(b)(7)(C)@dhs.gov; (b)(6)
Sent: Wed Sep 01 16:35:22 2010
Subject: Plan Onsite - (b)(6) (CRCL Referred-Plus Complaint #10-09-ICE-0126)

(b)(6),(b)(7)(C)

I'm back from my onsite investigation in Arizona. When possible, (b)(5)
(b)(5)

Thanks!

(b)(6)

Senior Policy Advisor (Compliance)
Office for Civil Rights and Civil Liberties (CRCL)
U.S. Department of Homeland Security
Washington, DC
202-357-(b)(6) **New Phone Number as of 6/28/10)**
(b)(6)@dhs.gov



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From: (b)(6)
Sent: Tuesday, July 27, 2010 3:35 PM
To: (b)(6),(b)(7)(C)
Subject: RE: Assistance

Hi, (b)(6), (b)(7)(C) Today I sent the complaint documents to ICE regarding the (b)(6) complaint. I'll let (b)(6),(b)(7)(C) know that they've gone out.

Non Responsive

(b)(6)

Senior Policy Advisor (Compliance)
Office for Civil Rights and Civil Liberties (CRCL)
U.S. Department of Homeland Security
Washington, DC
202-357-(b)(6) **New Phone Number as of 6/28/10)**
(b)(6)@dhs.gov

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Non Responsive

From: (b)(6)@aclusandiego.org]
Sent: Tuesday, June 22, 2010 1:34 PM
To: (b)(6)
Subject: RE: DHS Office for Civil Rights and Civil Liberties

Dear (b)(6)

Ms. (b)(6) will be leaving the migrant home in Tijuana on June 25. Her new address and phone number will be:

(b)(6)

Yes, please cc myself and her husband, (b)(6). He moved recently and also has a new mailing address. It is:

(b)(6)

Thank you,

(b)(6)

Legal Fellow / Staff Attorney
ACLU of San Diego & Imperial Counties
619-232-2121 (b)(6)
(b)(6)@aclusandiego.org

From: (b)(6)@dhs.gov]
Sent: Tuesday, June 22, 2010 9:58 AM
To: (b)(6)@aclusandiego.org
Subject: DHS Office for Civil Rights and Civil Liberties

Dear (b)(6)

CRCL is preparing correspondence to you and to Ms. (b)(6) regarding the complaint you submitted to our office on June 11, 2010. For purposes of mailing correspondence to her regarding our handling of the complaint, is Ms. (b)(6) still at the Tijuana, Mexico address you provided?

Also, is it your and/or Ms. (b)(6) wish that her husband be cc'd on correspondence?

Regards,

(b)(6)

Senior Policy Advisor (Compliance)

Office for Civil Rights and Civil Liberties (CRCL)
U.S. Department of Homeland Security
Washington, DC

202-357-(b)(6)
(b)(6) [@dhs.gov](mailto:_____@dhs.gov)

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From: (b)(6),(b)(7)(C)@dhs.gov]
Sent: Tuesday, July 27, 2010 3:43 PM
To: (b)(6)
Subject: Re: Referred-Plus Complaint Documents sent to ICE

Great. Thanks!

Sent using BlackBerry

From: (b)(6)@dhs.gov>
To: (b)(6),(b)(7)(C)@dhs.gov>
Sent: Tue Jul 27 15:39:21 2010
Subject: Referred-Plus Complaint Documents sent to ICE

(b)(6),(b)(7)(C)

I just transmitted to ICE the Referred-Plus complaint documents re (b)(6) I also alerted (b)(6),(b)(7)(C) that they've gone out. We can start planning the onsite now. Let me know if you have questions.

Have a great day,

(b)(6)

Senior Policy Advisor (Compliance)
Office for Civil Rights and Civil Liberties (CRCL)
U.S. Department of Homeland Security
Washington, DC
202-357 (b)(6) New Phone Number as of 6/28/10
(b)(6)@dhs.gov

WARNING: This message may contain attorney-client communications, attorney work product, and agency deliberative communications, all of which may be privileged and not subject to disclosure outside the agency or to the public. Please consult with the Department of Homeland Security, Office of General Counsel before disclosing any information contained in this email.



P.O. Box 87131
San Diego, CA 92138-7131
T/ 619-232-2121
F/ 619-232-0036

June 11, 2010

Department of Homeland Security
Office for Civil Rights and Civil Liberties
Review and Compliance
245 Murray Lane, SW
Building 410, Mail Stop #0800
Washington, DC 20528

Delivered via E-mail

To Whom It May Concern:

We write to bring your attention to some disturbing behavior on the part of several Immigrations and Customs Enforcement officers during a recent event in which (b)(6) (b)(6) was taken from her family and removed from the country.¹ Ms. (b)(6) whose husband and children are U.S. citizens, was taken from her home; handcuffed and detained in a van for several hours without access to a restroom, which caused her great pain on account of her gastritis; forcibly fingerprinted despite multiple requests to speak to her attorney; sexually assaulted by an ICE officer; then removed to Mexico. The treatment and conditions Ms. (b)(6) experienced were excessively harsh and likely violated Ms. (b)(6) constitutional rights as well as state and federal criminal law.

The Events of April 22, 2010

At approximately 5:50 am on April 22, 2010, at least four ICE agents knocked on the door of Ms. (b)(6) home at (b)(6) in San Marcos, California. Her husband, (b)(6) opened the door; the officers showed him a photograph of a woman and asked if that person lived there. Mr. (b)(6) told the officers that the woman did not live there and he did not recognize her. The officers then asked him who else lived at their address; he told them it

¹ Ms. (b)(6) is a class member in litigation related to *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). The Court held in *Perez-Gonzalez* that individuals who had been previously removed but met certain procedural requirements were eligible to apply for adjustment to lawful permanent status. Ms. (b)(6) meets these procedural requirements. *Perez-Gonzalez* was overturned by *Duran Gonzales v. DHS*, 508 F.3d 1227 (9th Cir. 2007), but the *Duran Gonzales* appeal is still pending en banc in the Ninth Circuit, the result of which will bear on Ms. (b)(6) immigration issues.

was just him, Ms. (b)(6) and their two children. The officers requested to speak with Ms. (b)(6) who came to the door. When the officers showed Ms. (b)(6) the photo, she also verified that the woman in the photo was not her and that she did not know the woman. The officers asked Ms. (b)(6) and her husband if they were receiving the mail of the woman in the photo; they said no. The ICE officers then asked for Ms. (b)(6) name and identification. When Ms. (b)(6) opened her wallet to take out her California state ID, one of the officers saw her papers from the Mexican consulate and asked to see those as well. Ms. (b)(6) handed over both documents.

After taking her ID and papers, the ICE officers informed Ms. (b)(6) that they had a deportation order against her. Ms. (b)(6) asked to see a warrant, but the officers stated that she did not have a right to see a warrant. By this time Ms. (b)(6) children, who had been in bed, had woken up and come to the door and were crying. A female ICE officer told Ms. (b)(6) and her husband, in Spanish, to put the children in another room if they didn't want the children to "see anything violent happen." The officer then instructed Ms. (b)(6) to bring a sweater because they were going to take her into custody, so Ms. (b)(6) put on her shoes and a sweater. Ms. (b)(6) again asked the officers to show her the order of deportation, but they told her they were not going to do that and to please not make them use violence on her.

The officers escorted Ms. (b)(6) from her home to a van and handcuffed her, though she asked them not to. They kept her in the van for about five hours while they continued searching other buildings along the street, checking on Ms. (b)(6) occasionally. During this time, Ms. (b)(6) asked twice to go to the bathroom, but she was not allowed to do so and was told to shut up. Ms. (b)(6) suffers from gastritis and is still experiencing stomach pains from that morning, as she was not allowed to relieve herself the entire time she was in the van. She remained handcuffed while the officers completed their search and took her to the ICE facility on Front Street in downtown San Diego.

At the downtown facility, Ms. (b)(6) was asked to sign some papers and fill out forms with medical questions. Ms. (b)(6) noted that the ICE officers did not write anything down when she told them she had gastritis. Instead, they told her she should have brought her medications.

Ms. (b)(6) refused to sign anything before she got a phone call and spoke to a lawyer. The ICE officers told her she would be allowed to speak to a lawyer after she signed the papers. When she still refused to sign, one of the officers said to her in Spanish, "You are a woman and we're men, and we don't want to use force, because we have a right to." Ms. (b)(6) again requested a lawyer before signing anything. One of the officers pried Ms. (b)(6) fist open, forcibly putting her fingerprints on the form that she had refused to sign. Ms. (b)(6) pulled her hand back and asked the officers to wait until her lawyer had arrived. A supervisor said she didn't have to sign if she didn't want to, but after the supervisor left, one of the remaining officers told Ms. (b)(6) that she was not in charge there and had no rights.

After a while, the officers moved Ms. (b)(6) into a bigger room. They told her that since her husband knew she was being detained and no lawyer had come yet, clearly no lawyer was coming. The ICE officers finally let her make a phone call, but she could not get through to her

lawyer. The officers then dialed the number for Ms. (b)(6) and got through. Ms. (b)(6) spoke with her lawyer's assistant, who said the lawyer was out of the office and to wait for him to get back. The ICE officers told Ms. (b)(6) her lawyer didn't care about her so she should sign.

Ms. (b)(6) requested another phone call to her husband, and the officers said she could make one last call. When Ms. (b)(6) called her husband to tell him what was happening, she spoke with him in the Zapotec dialect, which angered the ICE officers. They claimed she was a terrorist because they could not understand her dialect, and Ms. (b)(6) said she hadn't done anything wrong. ICE insisted that Ms. (b)(6) and her husband were criminals; Ms. (b)(6) denied being a terrorist.

After the call to her husband, the officers told Ms. (b)(6) she was nobody there and that she was going to put her fingerprints down "either the good way or the bad way." Ms. (b)(6) again refused and said she wanted her lawyer. An officer responded that her lawyer was at lunch and that was her second warning. They said at the third warning, they could use violence, and if Ms. (b)(6) hurt them, they would sue her. Ms. (b)(6) said there was no way she could hurt them, they were too big for her.

The officers then said warning time was over. The officer who had fingerprinted her earlier grabbed her hand and forced all ten of her fingerprints onto a scanning machine, though Ms. (b)(6) pleaded with them to wait for her lawyer. The officer had to pull her arm back and forth to get all the prints, and when Ms. (b)(6) protested that they were getting her fingerprints by force, the officers told her to shut up.

The ICE officers then tried to move Ms. (b)(6) into the hallway. Ms. (b)(6) did not want to move, so the officers physically pulled her into the hallway. A female officer pinned Ms. (b)(6) hands behind her back and pushed her against a desk, where Ms. (b)(6) was fingerprinted on paper, once again by force. To take her prints, the female officer took one of Ms. (b)(6) hands and a male officer took the other hand. Someone told the female officer to loosen her grip on Ms. (b)(6) which she did, but Ms. (b)(6) had already been hurt.

Around 1:00 pm, after Ms. (b)(6) had been in the San Diego facility for a little more than an hour, her attorney arrived. He spoke with her for about 15 minutes largely through gestures, due to language barriers. Her attorney believed that Ms. (b)(6) was trying to tell him her arm was hurting because she had been grabbed during the fingerprinting process. He also spoke to an official who identified himself as the director of ICE operations on Front Street, who readily stated that the officers had tried to fingerprint Ms. (b)(6) and had used physical force when she did not cooperate.

Later that day, Ms. (b)(6) was handcuffed behind her back, taken out of the facility, and escorted to a van. Because her hands were cuffed behind her, she was unable to get into the vehicle. To "help" her into the van, a male ICE officer put his hand inside Ms. (b)(6) pants, grabbed her buttock, then boosted her up. Ms. (b)(6) felt violated by this groping and got very upset even relaying the incident several weeks later.

Ms. (b)(6) was then taken to the border and removed from the United States.

ICE Officers Sexually Assaulted Ms. (b)(6) Used Excessive Force, and Subjected Ms. (b)(6) to Unnecessarily Harsh Detention Conditions

Abusive Sexual Conduct and Sexual Battery

The ICE officer at the San Diego facility who put his hand inside Ms. (b)(6) pants and grabbed her buttock violated both state and federal law. It is inconceivable why an officer would need to put his hand *inside* a person's pants to assist her into a van.

A person has committed abusive sexual conduct under federal law if he, "in any prison, institution, or facility in which persons are held in custody by direction of ... the head of any Federal department or agency, knowingly engages in sexual contact with another person without that other person's permission." 18 U.S.C. § 2244. Sexual contact is "the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person." 18 U.S.C. § 2246. For the purposes of § 2244, the term "prison" includes detention facilities. *Id.* The ICE facility where Ms. (b)(6) was held falls within the scope of § 2244 because it is presumably used to hold people in custody, even if just for a short period. *See United States v. Urrabazo*, 234 F.3d 904, 906 (5th Cir. 2000) (U.S. Marshals' Service cell block in a federal courthouse qualified as a 'detention facility' because prisoners were held in custody there, albeit for only a few hours). Thus the requirements under 18 U.S.C. § 2244 were met and the officer who grabbed Ms. (b)(6) buttocks clearly committed abusive sexual conduct.

The officer also committed sexual battery under state law. Section 243.4 of the California Penal Code states:

Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

Cal. Penal Code § 243.4(a). Sexual battery is a felony punishable by up to four years in state prison or \$10,000. *Id.*; Cal. Penal Code § 17(a). Even if the initial restraint was lawful, if a person "takes advantage of ... lawful restraints and engages in acts for an improper purpose, such as sexual arousal or gratification," the restraint becomes unlawful during the illegal acts. *People v. Alford*, 235 Cal. App. 3d 799, 805 (Cal. Ct. App. 1991) (affirming sexual battery conviction of correctional officer who engaged in sexually abusive conduct while transporting handcuffed female inmates). Additionally, any person who touches an intimate part of another person against that person's will for the purpose of sexual arousal, sexual gratification, or sexual abuse is guilty of misdemeanor sexual battery. Cal. Penal Code § 243.4(e)(1). Because the ICE officer touched an intimate part of Ms. (b)(6) body against her will in a sexually abusive manner while she was handcuffed, he committed both felony and misdemeanor sexual battery.

California law also prohibits assaults by public officers. Cal. Penal Code § 149 provides:

Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both such fine and imprisonment.

Cal. Penal Code § 149. It was clearly not necessary for the officer to put his hand inside Ms. (b)(6) pants or to grab her buttocks to help her into the van.

“Federal officers and employees are not, merely because they are such, granted immunity from prosecution in state courts for crimes against state law.” *New York v. DeVecchio*, 468 F. Supp. 2d 448, 454 (E.D.N.Y. 2007). In criminal prosecutions, “the immunity defense bars a state from prosecuting a federal agent for alleged violations of a state criminal law if (1) the federal agent was performing an act which he was authorized to do by the law of the United States and (2) in performing that authorized act, the federal agent did no more than what was necessary and proper for him to do.” *Id.* at 460. See also *Minnesota v. Weber*, 589 F. Supp. 2d 1170, 1172 (D. Minn. 2008). The ICE officer’s actions were neither necessary nor proper and therefore would not be immune from state prosecution.

Excessive Force and Unnecessarily Harsh Conditions

The unnecessarily harsh conditions under which Ms. (b)(6) was forced to remain handcuffed in a van for several hours, prohibited from relieving herself, likely violated her constitutional rights. Excessive force claims arising in the context of an arrest are governed by the Fourth Amendment, which protects people against unreasonable seizures. *Graham v. Connor*, 490 U.S. 386, 395 (1987). In determining whether government agents’ use of force is excessive, “the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Id.* at 397.

It was objectively unreasonable to keep Ms. (b)(6) in handcuffs for several hours while she was in the van, where she was monitored and outnumbered by ICE officers, had pleaded with the officers not to handcuff her, and gave no indication that she was a threat to the agents or anyone else.

It was also unreasonable to forbid Ms. (b)(6) from relieving herself for several hours. See, e.g., *Campbell v. City of Bakersfield*, 2006 U.S. Dist. LEXIS 49930, *88 (C.D. Cal. 2006) (“a detention pursuant to a search warrant may become unreasonable if it is unnecessarily prolonged, degrading or painful ... three refusals to use the restroom after six hours is arguably unnecessarily degrading and painful”); *Carroll v. Village of Homewood*, 2001 U.S. Dist. LEXIS 18857, *30-31 (N.D. Ill. 2001) (citing examples recognizing constitutional violations when government officers refuse to allow plaintiffs to use the restroom, and holding that “a jury could find that the officers’ denial of bathroom use [for one hour] was unreasonable”). Refusing to allow Ms. (b)(6) to use the bathroom was even more unreasonable in light of her medical

condition. Ms. (b)(6) continues to suffer from the gastritis effects of her prolonged confinement in the van.

Requested Action

In light of the ICE officers' egregious behavior and violations of Ms. (b)(6) constitutional rights, we request that the Office for Civil Rights and Civil Liberties investigate the behavior of the officers involved in the April 22 incidents, reprimand and take any other appropriate steps to hold those agents accountable for their actions. We also ask the Office to review ICE arrest and detention procedures and training to determine whether changes to those procedures and training are warranted. Furthermore, we request that Ms. (b)(6) be readmitted to the U.S. pursuant to humanitarian parole, in light of the harm inflicted upon Ms. (b)(6) the hardship of her deportation on her U.S. citizen husband and children, and the dynamic state of the applicable law governing her immigration issues.

Attached are the contact information for Ms. (b)(6) and witnesses to the events. Please feel free to contact (b)(6) at (619) 232-2121 ext. (b)(6) @aclusandiego.org if you have any questions.

Sincerely,

(b)(6)

Staff Attorney / Legal Fellow
ACLU of San Diego & Imperial Counties

cc: John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement
(b)(6),(b)(7)(C) Field Office Director, U.S. Immigration and Customs Enforcement, San Diego Field Office
Thomas Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division
Richard Skinner, Inspector General, Department of Homeland Security

From: (b)(6)@aclusandiego.org]
Sent: Friday, June 11, 2010 1:12 PM
To: Liberties, Civil
Subject: Civil Rights Complaint - (b)(6)
Attachments: DHS Civil Rights Complaint - (b)(6).pdf; Contact Information and Consent.pdf

To Whom It May Concern:

I am submitting a civil rights complaint on behalf of (b)(6) and her husband (b)(6).
(b)(6) Please find attached the detailed complaint and contact information.

Sincerely,

(b)(6)
Legal Fellow / Staff Attorney
ACLU of San Diego & Imperial Counties
619-232-2121 (b)(6)
(b)(6)@aclusandiego.org



Homeland
Security

July 26, 2010

(b)(6)

Oaxaca, Mexico 68745

Re: Complaint No. 10-09-ICE-0126

Dear Ms. (b)(6)

The Office for Civil Rights and Civil Liberties (CRCL) received information from the ACLU of San Diego & Imperial Counties on June 11, 2010, concerning your treatment by employees or officials of Immigration and Customs Enforcement (ICE) at San Marcos and San Diego, California, on April 22, 2010.

Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL has the responsibility to review and assess complaints against Department of Homeland Security (DHS) employees and officials concerning violations of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion.

CRCL takes allegations of violations of civil rights and civil liberties very seriously. We have determined that your allegations should be jointly investigated by Immigration and Customs Enforcement (ICE), a component of DHS, and by CRCL. In particular, we will work with ICE to review the following issues:

1. Whether the April 22, 2010 ICE operation was conducted in accordance with ICE policies and procedures;
2. Whether you were mistreated by ICE officers during your arrest;
3. Whether you were afforded the proper accommodations by the ICE officers when you reported your medical condition and your need to use a restroom;
4. Whether you were mistreated by ICE officers during processing at the downtown San Diego ICE facility (including access to a telephone, and legal access);
5. Whether ICE officers used excessive force to obtain your fingerprints;
6. Whether an ICE officer engaged in sexual misconduct when placing you in a DHS vehicle for your removal from the United States;
7. Whether your deportation was conducted in accordance with federal law and DHS policy.

We will work with ICE to review findings and assess compliance with civil rights requirements in these areas. The purpose of this process is to determine if your allegations raise issues that should and can be addressed by the management of the Department of Homeland Security.

Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, our complaint process does not provide individuals with legal or procedural rights or remedies. Accordingly, CRCL is not able to obtain any legal remedies or damages on your behalf. Instead, we use complaints like yours to find and address problems in DHS policy and its implementation.

Please note that Federal law forbids retaliation or reprisal by any Federal employee against a person who makes a complaint or discloses information to CRCL. 42 U.S.C. § 2000ee-1(e). If you believe that you or someone else is a victim of such a reprisal, please contact us immediately.

ICE or CRCL will contact you if additional information is needed or to report on the Department's review of this matter. If you have any questions concerning this referral, you may contact CRCL by phone at 1-866-644-8360, 1-866-644-8361 (TTY), or by email at crcl@dhs.gov. When you communicate with us, please include the complaint number. In addition, it is very important to notify us of any changes in your address or telephone number.

We thank you for your complaint; inquiries like yours help DHS meet its obligation to protect civil rights and civil liberties. You can expect to receive a letter from us informing you how the Department concluded this matter.

Sincerely,

(b)(6)

Director for Review and Compliance
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

Copies to:

(b)(6)

Staff Attorney/Legal Fellow
ACLU of San Diego & Imperial Counties
P.O. Box 87131
San Diego, CA 92138-7131

(b)(6)

San Marcos, CA 92069



Homeland
Security

DATE: July 26, 2010

MEMORANDUM FOR:

(b)(6), (b)(7)(C)

Acting Deputy Director
Office of Professional Responsibility
Immigration and Customs Enforcement

Peter S. Vincent
Principal Legal Advisor
Immigration and Customs Enforcement

FROM:

(b)(6)

Director for Review and Compliance
Office for Civil Rights and Civil Liberties

(b)(6)

Attorney Advisor
Office of General Counsel

SUBJECT:

Complaint No. 10-09-ICE-0126

(b)(6)

The Office for Civil Rights and Civil Liberties (CRCL) has received a complaint alleging that Immigration and Customs Enforcement (ICE) has violated an individual's civil rights or civil liberties. The purpose of this memorandum is to notify you of the complaint and to request that the appropriate office within ICE works in collaboration with CRCL staff to complete a joint inquiry into the enclosed complaint within 180 days of the date of this referral. Please see the attached Referred Complaint Assistance Form for guidance regarding this inquiry.

CRCL authorities. Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL is charged with investigating and assessing complaints against DHS employees and officials of abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion. The procedures for our investigations and the recommendations they may engender are outlined in DHS Management Directive 3500. We have received information concerning the above listed complaint that may fall under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1.

Access to information. More particularly, 42 U.S.C. § 2000ee-1(d) grants this Office access to the "information, material, and resources necessary to fulfill the functions" of the office, including the complaint investigation function; Management Directive 3500 further authorizes CRCL to:

Protected by Attorney-Client and Deliberative Process Privileges

- “Notify[] the relevant DHS component(s) involved of the matter and its acceptance by CRCL, and whether the matter will be handled by CRCL or by the component organization”;
- “Interview[] persons and obtain[] other information deemed by CRCL to be relevant and require[] cooperation by all agency employees”; and
- “Access[] documents and files that may have information deemed by CRCL to be relevant.”

Reprisals forbidden. In addition, 42 U.S.C. § 2000ee-1(e) forbids any Federal employee to subject a complainant or witness to any “action constituting a reprisal, or threat of reprisal, for making a complaint or for disclosing information to” CRCL in the course of this investigation.

This memorandum and the Referred Complaint Assistance Form are pursuant to these authorities.

Privilege and required transparency. Our communications with ICE personnel and documents generated during this review will be protected to the maximum extent possible by attorney-client and deliberative process privileges. Under 42 U.S.C. § 2000ee-1(f)(2), however, we submit quarterly reports to Congress—which are also posted on CRCL’s website—that provide, inter alia, “the type of advice provided and the response given to such advice;” and “a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of such officer.”

When the inquiry is complete, please provide CRCL with ICE’s findings and recommendations. CRCL will review them in accordance with our mission to assist DHS to secure the Nation while preserving individual liberty, fairness, and equality under the law. We look forward to working with your staff on this matter, will notify you when we have closed this complaint, and will provide you with any recommendations resulting from this complaint.

If you have any questions concerning this complaint, please do not hesitate to contact my colleague, (b)(6) by phone at 202-357-(b)(6) 1-866-644-8331 (TTY), or by email at (b)(6)@dhs.gov.

Copies to:

ice.opstasking@dhs.gov
joint.intake@dhs.gov

(b)(6),(b)(7)(C)

Office of Professional Responsibility
 Immigration and Customs Enforcement

Enclosures



OFFICE FOR CIVIL RIGHTS & CIVIL LIBERTIES (CRCL)
REFERRED COMPLAINT ASSISTANCE FORM

REFERRED COMPLAINT ASSISTANCE	
Assigned To:	Immigration and Customs Enforcement (ICE)
Requested From:	DHS Headquarters Office for Civil Rights and Civil Liberties (CRCL)
CRCL POC:	(b)(6) Senior Policy Advisor (Compliance), 202-357-(b)(6) (b)(6) @dhs.gov.
Date Referred to ICE:	July 20, 2010
Deadline to CRCL:	Within 180 days of the date on the attached memo.
CRCL Complaint No:	10-09-ICE-0126
SYNOPSIS	
On June 11, 2010, CRCL received a complaint from (b)(6) which was referred to our Office by the ACLU of San Diego & Imperial Counties, alleging that ICE officers mistreated Ms. (b)(6) during her arrest, processing, and deportation on April 22, 2010. According to the complaint, Ms. (b)(6) was removed from her home in San Marcos, California; handcuffed and detained in a van for several hours where she was denied access to a restroom despite reporting her medical need; forcibly fingerprinted though she requested to speak to her attorney prior to fingerprinting; and groped in a sexual manner as she was being placed in a DHS vehicle for deportation purposes.	
ISSUES/ALLEGATIONS	
Issues/Allegations to be addressed in ICE Fact Finding Report/ROI submitted to DHS CRCL:	1. (b)(5),(b)(6) 2. 3. 4. 5. 6. 7.
Information/Documents requested by DHS CRCL:	(b)(5),(b)(6)

Protected by Attorney-Client and Deliberative Process Privileges

DHS/TSA Civil Rights

DHS Complaint History Listing

DHS Matters: 10-09-ICE-0126

(b)(6)

Data Object	Date	Event	Field	New Value	Tracking Id	User	Reason
DhsComplaint	2010-06-22 12:31	Created	Task		6640	(b)(6)	migrated
DhsComplaint	2010-06-22 12:31	Created			6640	(b)(6)	migrated
DhsComplaint	2010-06-22 12:31	Edited			6640	(b)(6)	migrated
DhsComplaint	2010-06-22 12:31	Edited	Task:Assignment: Assigned matter From (b)(6) To:DHS Due:2010-12-08 17:00:39.055		6640	(b)(6)	migrated
DhsComplaint	2010-06-22 12:39	Edited			6640	(b)(6)	migrated
DhsComplaint	2010-06-22 12:39	Note Added	Sent to IG:		6640	(b)(6)	migrated
DhsComplaint	2010-06-22 17:18	Document Added	Document: Acknowledgement Letter (b)(6)		6640	(b)(6)	migrated
DhsComplaint	2010-06-22 17:21	Document Added	Document: 6 11 2010 (b)(6)		6640	(b)(6)	migrated
DhsComplaint	2010-06-22 17:25	Document Added	Document: 6 11 2010 (b)(6)		6640	(b)(6)	migrated
DhsComplaint	2010-06-22 17:27	Document Added	Document: 6 11 2010 (b)(6)		6640	(b)(6)	migrated
DhsComplaint	2010-06-23 12:48	Document Added	Document: Complaint No. 10-09-ICE-0126 From IG		6640	(b)(6)	migrated
DhsComplaint	2010-06-23 12:48	Document Added	Document: Complaint No. 10-09-ICE-0126 From IG 1		6640	(b)(6)	migrated

DhsComplaint	2010-06-23 12:50	Edited			6640	(b)(6)	migrated
DhsComplaint	2010-06-23 12:50	Note Added	From IG:		6640		migrated
DhsComplaint	2010-06-23 12:51	Edited			6640		migrated
DhsComplaint	2010-06-23 12:51	Note Added	To awaiting Recommendation:		6640		migrated
DhsComplaint	2010-06-23 16:14	Note Added	(b)(6) received referral documents and approved same day.		6640		migrated
DhsComplaint	2010-06-23 19:09	Edited			6640		migrated
DhsComplaint	2010-06-23 19:25	Document Added	Document: ICE Email - request for A #		6640		migrated
DhsComplaint	2010-07-01 11:10	Edited			6640		migrated
DhsComplaint	2010-07-01 11:10	Note Added	Recommendation Submitted: (b)(5) (b)(5),(b)(6)		6640		migrated
DhsComplaint	2010-07-09 20:18	Note Added	On 7/1/10 (b)(6) contacted (b)(6),(b)(7)(C) (b)(5),(b)(6) put (b)(6) in contact with the ASAC in the area to discuss. ASAC (b)(6),(b)(7)(C) reported that they'd been waiting to investigate the compla	int for some time but were told to wait for the CRCL paperwork. (b)(6) told him it would likely go out during the week of 7/12 and they would talk again then.	6640		migrated
DhsComplaint	2010-07-12 14:27	Edited	Task: Assignment: Assigned matter From (b)(6) To (b)(6) Due: 2010-12-08 17:00:39.0		6640		migrated
DhsComplaint	2010-07-12 14:27	Note Added	Approved (to Back From Officer): I think I already approved this, as a referred plus.		6640		migrated
DhsComplaint	2010-07-12 14:27	Edited			6640		migrated
	2010-	Document	Document: REFERRED-PLUS LTR (b)(6)				

DhsComplaint	07-27 16:49	Added	(b)(6) 0001		6640	(b)(6)	migrated
DhsComplaint	2010-07-27 16:49	Document Added	Document: REFERRED-PLUS MEMO (b)(6) 001		6640		migrated
DhsComplaint	2010-07-27 16:49	Note Added	Referred: This is a Referred-Plus Complaint		6640		migrated
DhsComplaint	2010-07-27 16:49	Edited			6640		migrated
DhsComplaint	2010-07-27 17:15	Document Added	Document: Email with (b)(6),(b)(7)(C)		6640		migrated
DhsComplaint	2010-07-27 17:15	Document Added	Document: Email to SAC (b)(6),(b)(7)(C)		6640		migrated
DhsComplaint	2010-07-27 17:15	Document Added	Document: Documents Emailed to ICE		6640		migrated
DhsComplaint	2010-07-27 17:15	Document Added	Document: REF FORM (b)(6) (b)(6) 001		6640		migrated
DhsComplaint	2010-07-27 17:17	Document Added	Document: Email with ACLU - New Address		6640		migrated
DhsComplaint	2010-09-02 16:09	Document Added	Document: Email New ICE ASAC re. Onsite		6640		migrated
DhsComplaint	2010-09-02 16:12	Note Added	When contacted San Diego area OPR ASAC to talk about onsite plans, was informed that he was leaving and there would be a new ASAC, so to hold off for a bit. On 9/2/10 sent another email and was introduced to the new ASAC (b)(6),(b)(7)(C) In follow-up ema	il on 9/2 asked her to contact me to plan.	6640		migrated
DhsComplaint	2010-09-29 13:54	Create	From Matters	migration.	6640		migration.
DhsComplaint	2011-09-09 12:16	Update	External Tracking Number	(b)(6)	6640		User Change
DhsComplaint	2011-09-09	Update	Days to Process	455	6640		User Change

	12:16					(b)(6)	
DhsComplaintAction	2013-01-22 07:54	Create	Reporting Summary	CRCL and ICE conducted a joint onsite investigation into these allegations. Based on records reviews and interviews with involved ICE personnel, ICE and CRCL concluded that the allegations were unfounded.	109282		User Change
DhsComplaintAction	2013-01-22 07:54	Create	Document	10-09-ICE-0126 Close Memo FINAL.pdf	109282		User Change
DhsComplaintAction	2013-01-22 07:54	Create	Action Date	01/22/2013	109282		User Change
DhsComplaintAction	2013-01-22 07:54	Create	Internal Summary	CRCL and ICE conducted a joint onsite investigation into these allegations. Based on records reviews and interviews with involved ICE personnel, ICE and CRCL concluded that the allegations were unfounded.	109282		User Change
DhsComplaintAction	2013-01-22 07:54	Create	Action	Closed - Referred/No Further Action	109282		User Change
DhsComplaintAction	2012-11-14 09:43	Update	Secondary Assignment	(b)(6)	101703		User Change
DhsComplaintAction	2012-11-14 09:43	Update	Primary Assignment	(b)(6)	101703		User Change
DhsComplaintAction	2012-10-25 11:35	Update	Secondary Assignment	(b)(6)	101703		User Change
DhsComplaintAction	2012-10-25 11:35	Update	Primary Assignment	(b)(6)	101703		User Change
DhsComplaintAction	2011-02-10 13:29	Update	Primary Assignment	(b)(6)	101703		User Change
DhsComplaintAction	2011-02-09 11:33	Update	Primary Assignment	(b)(6)	101703		User Change
DhsComplaintDocument	2013-01-22 07:55	Create	Dateentered	01/22/2013	89186		User Change

DhsComplaintDocument	2013-01-22 07:55	Create	Document Type	Miscellaneous Material/Other	89186	(b)(6)	User Change.
DhsComplaintDocument	2013-01-22 07:55	Create	Foreign Language	No	89186		User Change.
DhsComplaintDocument	2013-01-22 07:55	Create	Comments	(b)(5)	89186		User Change.
DhsComplaintDocument	2013-01-22 07:55	Create	Document 1	FW_ Closing memo_letter with ICE email.pdf	89186		User Change.
DhsComplaintDocument	2013-01-22 07:55	Create	Dateentered	01/22/2013	89185		User Change.
DhsComplaintDocument	2013-01-22 07:55	Create	Document Type	Closed Letter	89185		User Change.
DhsComplaintDocument	2013-01-22 07:55	Create	Foreign Language	No	89185		User Change.
DhsComplaintDocument	2013-01-22 07:55	Create	Document 1	10-09-ICE-0126 Close Letter FINAL.pdf	89185		User Change.
DhsComplaintIssue	2011-08-12 13:39	Update	Color		12199		User Change.
DhsComplaintIssue	2011-08-12 13:39	Update	Disability		12199		User Change.
DhsComplaintIssue	2011-08-12 13:39	Update	Other Issue		12199		User Change.
DhsComplaintIssue	2011-08-12 13:39	Update	Race		12199		User Change.
DhsComplaintIssue	2011-08-12 13:39	Update	Comments	07/01/2010: Recommendation Submitted: Referred Plus to ICE - Assign to (b)(6) 07/09/2010: Approved (to Back From Officer):I think I already	12199		User Change.

				approved this, as a referred plus. RECOMMENDATION: (b)(5) (b)(5),(b)(6)		(b)(6)
DhsComplaintIssue	2011-08-12 13:39	Update	(b)(5)	(b)(5)	12199	User Change
DhsComplaintIssue	2011-08-12 13:39	Update	Religion		12199	User Change
DhsComplaintIssue	2011-08-12 13:39	Update	Situation	DHS law enforcement activity	12199	User Change
DhsComplaintIssue	2011-08-12 13:39	Update	Redirect to Subject	No	12199	User Change
DhsComplaintIssue	2011-08-12 13:39	Update	Incident Location Type		12199	User Change
DhsComplaintIssue	2011-08-12 13:39	Update	Sex		12199	User Change

IMMIGRATION COURT
625 EVANS STREET, ROOM 148A
ELIZABETH, NJ 07201

In the Matter of

(b)(6)

Respondent

Case No.: (b)(6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on FEBRUARY 25, 2010.
This memorandum is solely for the convenience of the parties. If the
proceedings should be appealed or reopened, the oral decision will become
the official opinion in the case.

[X] The respondent was ordered removed from the United States to SAUDI
ARABIA.

- [] Respondent's application for voluntary departure was denied and
respondent was ordered removed to or in the
alternative to .
- [] Respondent's application for voluntary departure was granted until
upon posting a bond in the amount of \$ _____
with an alternate order of removal to .

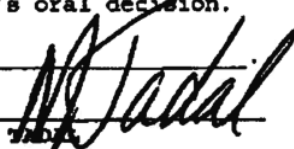
Respondent's application for:

- [] Asylum was () granted () denied () withdrawn.
- [] Withholding of removal was () granted () denied () withdrawn.
- [] A Waiver under Section _____ was () granted () denied () withdrawn.
- [] Cancellation of removal under section 240A(a) was () granted () denied
() withdrawn.

Respondent's application for:

- [] Cancellation under section 240A(b)(1) was () granted () denied
() withdrawn. If granted, it is ordered that the respondent be issued
all appropriate documents necessary to give effect to this order.
- [] Cancellation under section 240A(b)(2) was () granted () denied
() withdrawn. If granted it is ordered that the respondent be issued
all appropriated documents necessary to give effect to this order.
- [] Adjustment of Status under Section _____ was () granted () denied
() withdrawn. If granted it is ordered that the respondent be issued
all appropriated documents necessary to give effect to this order.
- [] Respondent's application of () withholding of removal () deferral of
removal under Article III of the Convention Against Torture was
() granted () denied () withdrawn.
- [] Respondent's status was rescinded under section 246.
- [] Respondent is admitted to the United States as a _____ until _____.
- [] As a condition of admission, respondent is to post a \$ _____ bond.
- [] Respondent knowingly filed a frivolous asylum application after proper
notice.
- [] Respondent was advised of the limitation on discretionary relief for
failure to appear as ordered in the Immigration Judge's oral decision.
- [] Proceedings were terminated.
- [] Other: _____

Date: Feb 25, 2010


MIRLANDE TADI
Immigration Judge

Appeal: RESERVED BY APPLICANT

APPEAL: March 29, 2010

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b)(6) Elizabeth, NJ

Date: JUN 30 2010

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

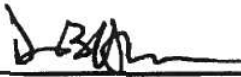
ON BEHALF OF RESPONDENT: Pro se

A Notice of Appeal (Form EOIR-26) must be filed within 30 calendar days of an Immigration Judge's oral decision or the mailing of a written decision unless the last day falls on a weekend or legal holiday, in which case the appeal must be received no later than the next working day. 8 C.F.R. § 1003.38(b), (c). In the instant case, the Immigration Judge's decision was rendered orally on February 25, 2010. The appeal was accordingly due on or before March 29, 2010. The record reflects, however, that the Notice of Appeal was filed with the Board of Immigration Appeals on June 14, 2010. We find that the appeal is untimely. The Immigration Judge's decision is accordingly now final, and the record will be returned to the Immigration Court without further action. See 8 C.F.R. §§ 1003.3(a), 1003.38, 1003.39, 1240.14 and 1240.15.

We note that because we are dismissing the appeal for lack of jurisdiction, either party wishing to file a motion in this case should follow the following guidelines: If you wish to file a motion to reconsider challenging the finding that the appeal was untimely, you must file your motion with the Board. However, if you are challenging any other finding or seek to reopen your case, you must file your motion with the Immigration Court. See *Matter of Mladineo*, 14 I&N Dec. 591 (BIA 1974); *Matter of Lopez*, 22 I&N Dec. 16 (BIA 1998). You should also keep in mind that there are strict time and number limits on motions to reconsider and motions to reopen. See sections 240(c)(6)(A) & (B) and 240(c)(7)(A) & C of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(c)(6)(A) & (B) and (c)(7)(A) & C; 8 C.F.R. §§ 1003.2(c)(2), 1003.23(b)(1); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997).

In light of the foregoing, the following order will be entered.

ORDER: The record is returned to the Immigration Court without further action.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ELIZABETH, NEW JERSEY

File No.: (b)(6)

In the Matter of:

(b)(6)

Respondent.

IN REMOVAL PROCEEDINGS

ON BEHALF OF RESPONDENT

(b)(6)

Pro Se

ON BEHALF OF DHS

Office of Chief Counsel/ICE/DHS
625 Evans Street, Room 135
Elizabeth, New Jersey 07201

INTERLOCUTORY DECISION & ORDER OF THE IMMIGRATION JUDGE

I. Facts and Procedural History

(b)(6) ("Respondent"), a native and citizen of Saudi Arabia, was admitted to the United States ("U.S.") at New York, New York, on or about May 7, 2006 as a nonimmigrant student to attend classes (b)(6) New York, New York. On or about January 8, 2007, Respondent transferred to (b)(6) (b)(6). On or about September 15, 2009, Respondent stopped attending classes at (b)(6) and his student status was thus terminated. On January 13, 2010, Respondent was detained and a Notice to Appear ("NTA") was issued by the Department of Homeland Security ("DHS") charging him removable in violation of INA § 237(a)(1)(C)(i)¹ under the foregoing facts. (Exh. 1).

On January 19, 2010, Respondent appeared for a Master hearing. The Court provided Respondent the opportunity to seek counsel, but he voluntarily chose to represent himself. Respondent admitted allegations 1 through 4; denied allegation 5; and denied the charge of removability under INA § 237(a)(1)(C)(i). Specifically, Respondent claimed that his student status was not terminated after September 15, 2009. DHS submitted written correspondence from (b)(6) Associate Director, International Students & Scholars Office, Columbia University, dated November 13, 2009. (Exh. 2).

On February 8, 2010, Respondent appeared *pro se* before the Court for a Master hearing. Respondent contested the charge under INA § 237(a)(1)(C)(i) and maintained

¹ INA § 237(a)(1)(C)(i) states "[A]ny alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248, or to comply with the conditions of any such status, is deportable." *Id.*

that his student status was not terminated after September 15, 2009. In support of his claim, Respondent submitted electronic mail from (b)(6) Immigration Advisor, (b)(6) dated November 4, 2009. (Exh. 3)

II. Findings of the Court

8 C.F.R. § 1240.8(c) and INA § 240(c)(2)(B) establish definitive burdens of proof in removal proceedings. In pertinent part, the foregoing regulation and statute state:

“Once the alienage has been established, unless the respondent demonstrates by *clear and convincing evidence* that he or she is lawfully in the United States pursuant to a prior admission, the respondent must prove that he or she is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged.” 8 C.F.R. § 1240.8(c)(emphasis added); and

“In the proceeding the alien has the burden of establishing by *clear and convincing evidence*, that the alien is lawfully present in the United States pursuant to a prior admission.” INA § 240(c)(2)(B)(emphasis added).

Respondent admitted his alienage and does not contest this allegation in the NTA. As such, the burden of proof shifted to Respondent to demonstrate by “clear and convincing evidence” that he is “lawfully in the United States pursuant to a prior admission.” *Id.* In support of his claim that his student status was not terminated, Respondent stated that he “registered for the fall [semester], attended the first week [of classes]” and after September 15, 2009, he “was in the process to sort (sic) the problem to update his registration.” (Hearing Tape, Jan. 19, 2010, minute 3:25). Respondent submitted a November 4, 2009 electronic correspondence from an Immigration Advisor at (b)(6) with the subject “Deadline for I-20 extensions” and a list of five “important points” about his immigration status. (Exh. 3).

When specifically asked whether he re-registered and became a full-time student after September 15, 2009, Respondent stated “no.” (Hearing Tape, Jan. 19, 2010, minute 3:55). Additionally, the November 4, 2009 correspondence submitted by Respondent was in the form of electronic mail, unofficial, informal correspondence, and not of legal import to be relied upon. The same correspondence further notified Respondent that he was a “student in F-1 status whose I-20 expires at the end of the fall semester ... on December 11, 2009” and advised him to “stop by [the Office of Immigration Advising] immediately should [he] have any questions or concerns.” (Exh. 3, (b)(6) (b)(6) Nov. 4, 2009). Moreover, DHS submitted correspondence from (b)(6) Associate Director, International Students & Scholars Office, Columbia University, on official letterhead specifically indicating that after September 15, 2009, Respondent “was no longer enrolled by the University. He was withdrawn by the school for failure to attend class.” (Exh. 2, (b)(6) Nov. 13, 2009).

Respondent's testimony that he "[only] attended the first week" of classes in the fall semester contradicts his position that his student status was not terminated after September 15, 2009. Respondent has not presented any official objective evidence to demonstrate that he maintained his student status at (b)(6) after September 15, 2009. Based on the foregoing, Respondent has failed to present "clear and convincing evidence" under 8 C.F.R. § 1240.8(c) and INA § 240(c)(2)(B), that after September 15, 2009, he was "lawfully in the United States pursuant to a prior admission." Id.

III. Conclusion

Respondent's submission in support of his claim does not show that he maintained his student status at (b)(6) after September 15, 2009. Therefore, the court sustains the allegation that Respondent is removable as charged according to INA § 237(a)(1)(C)(i).

ORDER

IT IS ORDERED that the charge under INA § INA § 237(a)(1)(C)(i) is SUSTAINED.

IT IS FURTHER ORDERED that Respondent return to court on February 18, 2010 at 8:30 a.m. for a Master Calendar Hearing to present any applications for relief.

Date

2/9/2010


Mirlande Padal
Immigration Judge

Escort Threat Assessment

For use when determining need for escorts when transporting via commercial air carrier.

Alien name: (b)(6) A# (b)(6)
Date of birth: (b)(6) Sex: M ☒ / F ☐ Country of citizenship: Saudi Arabia
Field/sub office: Newark/Elizabeth

I. THREAT TO NATIONAL SECURITY/TERRORIST NEXUS: No ☒ / Yes ☐ (Yes = 3b = escort)

II. EVALUATION:

A. Criminal history that demonstrates current propensity toward violent behavior: (list/explain)

None

B. Escape history: (list/explain)

None

C. Disciplinary incidents while in custody: (list type of incident and sanction)

Subject refused removal on 4/12/2010.

III. SPECIAL CONCERNS:

- ☐ Known management problem ☐ Medical problem/physical impairment ☒ Other: (specify)
☐ Serious violence threat ☐ Psychological/mental impairment
☐ Known gang affiliation ☐ Suicide risk

Describe concern(s): Subject refused removal on April 12, 2010.

IV. RECOMMENDED CLASS DESCRIPTOR: 3

(b)(6),(b)(7)(C)

Printed name and title of classification officer

Signature of classification officer

4/13/2010

Date

V. SUPERVISORY REVIEW: ☒ Concur ☐ Do Not Concur

Comments:

(b)(6),(b)(7)(C)

Printed name and title of supervisor

Signature of supervisor

4/13/2010

Date

VI. FINAL CLASS DESCRIPTOR: 3 ESCORT: ☒ Yes / ☐ No NUMBER OF ESCORT OFFICERS: 2

WOULD THIS REMOVAL REQUIRE AN ESCORT UNDER THE 2002 ESCORT POLICY?: ☒ Yes / ☐ No

Comments:

(b)(6),(b)(7)(C)

Printed name and title of authorizing official

Signature of authorizing official

4/13/10
Date

From: (b)(6)
To:
Cc:
Subject: RE: CRCL Complaint no. 10-10-ICE-0164
Date: Tuesday, August 17, 2010 12:49:15 PM

Office of Inspector General

U.S. Department of Homeland Security



**Homeland
Security**

The below information has been reviewed and is returned for whatever administrative action or inquiry you consider appropriate. Should any administrative or personnel action result from your response to this information, you are requested to report the final result of that action within 30 business days of its conclusion.

If your review of this matter discloses evidence of previously unreported criminal misconduct that is reportable under Management Directive 0810.1, you are required to notify this office of that information before any additional investigative steps are taken.

From: (b)(6)@dhs.gov]
Sent: Monday, August 16, 2010 5:37 PM
To: (b)(6)
Cc:
Subject: CRCL Complaint no. 10-10-ICE-0164

(b)(6)

Please review new complaint no. 10-10-ICE-0164:

On July 13, 2010, CRCL received a letter from (b)(6) a Saudi Arabian citizen who was arrested by ICE for failing to comply with the terms of his student visa. Mr. (b)(6) states that on January 13, 2010, officers entered his apartment without his consent, notice, or court papers. Mr. (b)(6) states that he informed ICE personnel that his immigration case was currently before the Board of Immigration Appeals, however, ICE personnel repeatedly disregarded the BIA process, and gave Mr. (b)(6) additional paperwork to sign related to his deportation and final order of removal.

Mr. (b)(6) states that he was forcibly placed on a Delta flight to Cairo out of JFK; DHS employees dragged a handcuffed Mr. (b)(6) through the airport, pushing him on the right, left and backside, until he was placed on the plane. On the plane, his hands were cuffed behind his back to a belt fastened around his waist. After much discussion between the DHS officers and the captain of the plane, the captain determined that he did not want Mr. (b)(6) on his flight. Mr. (b)(6) was taken off the flight and escorted to the Elizabeth Detention Center for the night. Elizabeth Detention Center did not complete any health checks when Mr. (b)(6) arrived in their custody. Mr. (b)(6) was recharged, and taken back to Essex County Jail.

Mr. (b)(6) asks for justice against those who infringed upon his rights.

NOTE: According to EARMS, Mr. (b)(6) is not an aggravated felon and is currently being held at the Essex County Jail.

Please reply to me, with copy to (b)(6)

Thanks,

(b)(6)

Policy Advisor

Office for Civil Rights and Civil Liberties

U.S. Department of Homeland Security

202-357-(b)(6) (New phone number as of June 28, 2010)

(b)(6) @hq.dhs.gov

SHORT FORM COMPLAINT CLOSURE RECOMMENDATION

To: Tamara Kessler
From: (b)(6)
Date: May 9, 2011
Complaint: (b)(6) 10-10-ICE-0164¹

Recommendation:

(b)(5)

Complaint Synopsis:

On July 13, 2010, CRCL received a letter from (b)(6) a Saudi Arabian citizen who was arrested by ICE for failing to comply with the terms of his student visa. Mr. (b)(6) states that on January 13, 2010, he was arrested by ICE, processed, and transferred to Elizabeth Detention Facility in Elizabeth, New Jersey. Mr. (b)(6) alleges that while in detention, ICE actively continued steps to effect his removal despite the fact that he had informed ICE personnel that his immigration case was currently before the Board of Immigration Appeals. (BIA). Mr. (b)(6) alleges that ICE personnel repeatedly disregarded the BIA process by giving him additional paperwork to sign related to his deportation and final order of removal. Further, it is alleged that while his BIA appeal was pending, Mr. (b)(6) was placed on a flight for removal from the country. Additionally, Mr. (b)(6) complains that while he was being escorted to the flight, he was handcuffed and pushed by officers. According to Mr. (b)(6) once the officers seated and belted him, the captain of the flight approached officers. The captain eventually decided that Mr. (b)(6) would not fly, so officers escorted Mr. (b)(6) to Essex County Jail in Newark, New Jersey. Mr. (b)(6) alleges that his shirt was "worn off" from the officer's actions, and he did not receive an adequate medical checkup after being admitted to Essex County Jail, after the removal attempt.

Suggested closure method(s):

(b)(5)

Explanation (Attach any relevant information used in making the recommendation).

We addressed the following in regard to Mr. (b)(6) complaint:

(b)(5),(b)(6)

¹ The complainant was removed from the United States on August 24, 2010. With no contact information available, CRCL is unable to send a close letter to the complainant.

Protected by deliberative process privileges.